



**Town of Stow  
Zoning Board of Appeals**

**Application Requirements, Procedural Rules, and Application Forms for:  
Special Permit  
Variance  
Appeal of Building Commissioner/Zoning Enforcement Officer/Sign Officer**

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## SECTION 1 GENERAL PROVISIONS

### 1.1 AUTHORITY

#### **Variance, Special Permit and Appeal from Unfavorable Action of the Building Commissioner/Zoning Enforcement Officer/Sign Officer**

These Rules and Regulations are adopted by the Stow Zoning Board of Appeals (hereinafter the ZBA) as authorized by M.G.L. Chapter 40A and the Stow Zoning Bylaw as amended. The ZBA has the following powers including:

1. To hear and decide Applications for Special Permits upon which the ZBA is empowered under the Stow Zoning Bylaw.
2. To hear and decide Applications for Variances as set forth in M.G.L. Chapter 40A, Section 10 and the Zoning Bylaw.
3. To hear and decide appeals of the Building Commissioner/Zoning Administrator in accordance with M.G.L. Chapter 40A Section 8.
4. To hear and decide appeals of the Building Commissioner/Sign Officer in accordance with Section 6.3.7.6 (Signs) of the Zoning Bylaw.

### 1.2 PURPOSE

The purpose of these Rules is to set forth uniform procedures for the filing of Application(s) and conducting the business of the ZBA.

### 1.3 DEFINITIONS

In these Rules the following terms shall have the following meanings:

- 1.3.1 **Applicant:** Any person or such person's authorized representative who files an Application with the ZBA.
- 1.3.2 **Application:** All Plans, Forms, Reports, Studies or other documents which are submitted to the ZBA.
- 1.3.3 **Appeal of Decision of Building Commissioner/Zoning Enforcement Officer/Sign Officer**  
An appeal to the ZBA by any person aggrieved by reason of their inability to obtain a permit or by enforcement action from any Zoning Administrator/Zoning Enforcement Officer under the provisions of M.G.L. Chapter 40A or the Town of Stow Zoning Bylaw, or by any person including an officer or board of the Town of Stow, or of an abutting city or town aggrieved by an order or decision of the Building Commissioner or other administrative official, in violation of any provision of M.G.L. Chapter 40A or the Town of Stow Zoning Bylaw.
- 1.3.4 **Building Commissioner:** The Town of Stow BUILDING INSPECTOR as defined in Section 9.6 of the Zoning Bylaw, or other designated authority or their duly authorized representative, appointed by the Select Board, and charged with the enforcement of the Zoning Bylaw.
- 1.3.5 **Parties in Interest:**  
For purposes of these Rules, Parties in Interest shall include:

The Applicant; owner; abutters; owners of land directly opposite on any private or public street or way; and abutters to the abutters within three hundred feet of the property line of the subject parcel or lot as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town; the Stow Planning Board; and the Planning Board of every abutting city or town.

- 1.3.6 **Rules:** The Application Requirements, Procedural Rules and Application Forms as presented herein and subsequently modified hereafter.
- 1.3.7 **Site Plan:** Plans and supplementary information as described in these Rules.
- 1.3.8 **Special Permit:** A permit issued by the ZBA when required by the Zoning Bylaw which outlines the special provisions that need to be met in order for a specific use or activity on a specific parcel or lot to be in compliance with the requirements of M.G.L c.40A and the Zoning Bylaw.
- 1.3.9 **Variance:** An official dispensation to deviate from a specific dimensional requirement of the Zoning Bylaw.
- 1.3.10 **ZBA:** The Zoning Board of Appeals as a whole, (comprised of up to 5 members and up to six associate members, all appointed by the Select Board); or the specific members and/or associate members who took official action on a particular matter. The chairman of the Board may designate an associate member to sit on the Board in case of absence, inability to act, or conflict of interest on the part of any member or in the event of a vacancy on the Board until said vacancy is filled. The ZBA acts in accordance with the intent and purposes expressed and implied in the Zoning Bylaw, as authorized and permitted by M.G.L Chapter 40A, Section 12.
- 1.3.11 **The Zoning Act:** Massachusetts General Laws, Chapter 40A, as amended.
- 1.3.12 **Zoning Bylaw:** The Zoning Bylaw of the Town of Stow, as amended, or the version of the Zoning Bylaw in effect at the time an application is filed.
- 1.3.13 **Zoning Enforcement Officer:** The Building Commissioner, or a duly authorized representative, appointed by the Select Board, and charged with the enforcement of the Zoning Bylaw.

#### 1.4 APPLICABILITY

Any person or entity submitting an Application to the ZBA shall comply with the provisions of these Rules, whether or not such person is governed by any other federal, state, or local permits, variances, approvals, or programs.

#### 1.5 WAIVER OF RULES

- 1.5.1 **Waiver from Compliance** – Strict compliance with these Rules may be waived when, in the opinion of the ZBA, such waiver is in the public interest and is consistent with the intent and purpose of the Zoning Bylaw and these Rules.

- 1.5.2 **Request for Waiver from Rules** – If a waiver to a filing requirement is desired, a written request for such waiver shall be made at the time of filing. If an oral request for a waiver from the Rules is made at a hearing or meeting, it shall be reduced to, and submitted as, a written request. Any request for a waiver from these Rules must be submitted, in writing, prior to the close of the public hearing. Any request for a waiver must clearly identify the provision or provisions of these Rules from which relief is sought and such request must be accompanied by a statement setting forth the reason or reasons why, in the Applicant's opinion, the granting of such a waiver would be in the public interest and consistent with the intent and purpose of the Zoning Bylaw and these Rules.
- 1.5.3 **Denial of Waiver Request** – If a requested waiver is denied (not granted) the submission of the required material or information shall be submitted to the ZBA prior to the close of the public hearing.
- 1.6 **Advice from Town Staff** - Any advice, opinion, or information given to the Applicant by an individual ZBA member, or by any agency, official, or employee of the Town shall be considered advisory only and not be binding on the ZBA or Applicant.
- 1.7 **Amendments to the Rules** - The Rules may be amended by a majority vote of the members of the ZBA at or after a public meeting at which such amendment has been deliberated.
- 1.8 **Effective Date of the Rules** - These Rules, or any amendment thereto, shall become effective upon vote of the ZBA following a public meeting and the filing of the same with the Town Clerk.

## SECTION 2

### FILING REQUIREMENTS

#### 2.1 WHO MAY FILE

The owner of record, owner's representative or other party with the knowledge and consent of the owner.

#### 2.2 PRELIMINARY CONSULTATIONS

Consultation between the Applicant and ZBA staff prior to the filing of an Application with the ZBA is recommended and can prevent delays in processing of the final Application.

#### 2.3 SUBMISSION OF APPLICATION

The Applicant shall file one copy of the complete Application with the Town Clerk and the requisite number of remaining copies (as defined in Section 2.4.6 below) shall be filed with the ZBA Administrative Assistant during posted business hours. The date and time of filing will be certified by the Town Clerk (M.G.L. Chapter 40A, Section 9). The Applicant may request and shall be entitled to a written receipt for the materials submitted. The date of filing shall be considered the date upon which the Application or notice thereof has been delivered to or received by the Stow Town Clerk.

#### 2.4 CONTENTS OF APPLICATION

The following contents are required for all applications for Special Permit and Variance. See Sections 3.2, and 4.2 for additional content requirements for specific application types.

*See Section 5.2 for required plans and documentation for Appeal from Decision of the Building Commissioner/Zoning Enforcement Officer/Sign Officer.*

##### 2.4.1 Application Form – *See Appendix 1 of these Rules*

All information as part of an Application shall be furnished by the Applicant in the manner prescribed in these Rules unless a waiver is requested and granted as set forth in Section 1.5 above.

A complete Application shall be made in writing on a form entitled "Application for a Special Permit, Dimensional Variance, Sign Variance or Appeal from Unfavorable Action of the Building Commissioner/Zoning Enforcement Officer. Such form is included in the Appendix of these Rules.

In the case where the Applicant is a person other than the record owner of the property, the Applicant must obtain the owner's signature on this form indicating that the owner has knowledge of and consents to the Application.

If the Applicant is acting in the name of a trust, corporation or company, any authorizing vote shall be attached.

##### 2.4.2 Certified List of Abutters



A List of the Parties in Interest as defined in these Rules, certified and provided by the Board of Assessors, or its authorized representative, including associated mailing labels provided by the Assessors. The Applicant shall pay any charges required by the town Assessor for the list.

#### 2.4.3 Other Permits and Variances

List and copies of variances and permits previously issued, and recorded at the Registry of Deeds or on file with the Stow Building Department, for the property by the ZBA, Planning Board or Conservation Commission.

#### 2.4.4 Recorded Plans and Deeds

A copy of the most recently recorded plan(s) and deed(s) for the lot(s) on which the Permit is being sought, bearing the book number(s), page number(s), and date(s) of recording(s) or registration(s).

#### 2.4.5 Plans

1. Architectural Plan – Elevations and Architectural Renderings – front, sides and rear elevations showing all proposed changes at an appropriate scale generally not less than 1/8" = 1'.
2. A site plan showing existing and proposed conditions prepared by a registered professional. Said site plan shall show and describe the following:
  - a. A locus plan showing the general location of the property in relation to the surrounding area.
  - b. Property bounds, lot area, dimensions, and property line setbacks of all existing and proposed structures.
  - c. All existing and proposed easements, rights of way and other matters of record.
  - d. Land use and ownership of abutting land, including land across a public or private way from the site.
  - e. The approximate locations of all structures, wells and septic systems within 100 feet of the subject property.
  - f. A description and delineation of all zoning and Overlay Districts.

#### 2.4.6 Number of Copies of Application

In addition to one copy of the complete application filed with the Town Clerk as required by M.G.L. Chapter 40A, Section 9 and Section 2.3 of these rules, any person who submits an Application to the ZBA shall include, by delivery or registered mail, the following:

1. One copy of the complete application in electronic format (pdf).
2. Nine (9) copies of a properly executed Application Form,
3. Certification by the Town Clerk of the date and time of filing.
4. The required filing fee.
5. Five (5) copies full scale plan (24"x36"), if required by the ZBA or staff, and nine (9) copies reduced scale (11"x17") plan.
6. Nine (9) copies of the deed on all parcels contained within the site plan.
7. Nine (9) copies of a written list of any requested waivers from the Rules.
8. Nine (9) copies of a letter documenting authorizing vote if the developer is acting in the name of a trust, corporation or company.
9. One (1) copy of a complete list of abutters certified by the Board of Assessors or its authorized representative and associated mailing labels.

10. Four (4) copies of the Stormwater Management Report, if applicable.
11. Nine (9) copies of Development Impact Statement (Appendix 2), if applicable.

## **2.5 FILING FEE**

Any Application to the ZBA shall include a fee to cover the expenses incurred by the Town in reviewing the Application, excluding the cost of plan review by a consulting engineer for the Town which, if applicable, shall be billed separately. The fee shall be submitted in check form and made payable to "Town of Stow". The amount of the fee shall be \$250.00 plus a \$2.00 charge for each listed abutter certified by the Board of Assessors. In the event that a simultaneous application is filed for a Variance and Special Permit, such applications may be submitted as one filing and one filing fee.

- 2.5.1 Additional Review Fee Deposits** - As authorized by MGL Chapter 44, Section 53G, so that the ZBA may make the findings required under the Zoning Bylaw and ensure that the public safety will be protected, the ZBA may hire outside engineering or legal consultants to review an Application. To cover the cost of these reviews an additional review fee deposit may be required at the time of submission or at any appropriate time in the review process.

The amount of the Review Fee Deposit will reflect the anticipated consultant fee plus 10%. Note that some projects may require additional fees to cover further study if significant impacts or problems are found in the initial review. Any amount of the deposits remaining after the issuance of building permits for the proposed construction or completion of site plan whichever is applicable plus any remaining accrued interest will be repaid to the Applicant or the Applicant's successor in interest.

- 2.5.1.1 Appeal from the Selection of the Consultants** – The Applicant may appeal the selection of an outside review consultant to the Select Board. If no decision is made by the Select Board within thirty days following the filing of an appeal, the selection of the ZBA stands. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.

## **SECTION 3 SPECIAL PERMITS**

### **3.1 APPLICABILITY**

Certain uses are designated in the Zoning Bylaw as requiring a Special Permit granted by the ZBA, including: Section 3.2.2 (Residential District); Section 3.3.3 (Business District); Section 3.9 (Non-Conforming Uses and Structures); Section 4.1 (Standard Dimensional Provisions); Section 5.1 (Floodplain Overlay District); and Section 7.2 (Parking).

In accordance with Section 9.2.6 (Mandatory Findings) of the Zoning Bylaw the ZBA of Appeals is required to find that the proposed use and development:

1. is in harmony with the purpose and intent of the Zoning Bylaw;
2. will not be detrimental or injurious to abutting properties or ways, the neighborhood, community amenities or the Town of Stow;
3. is appropriate for the site for which the Application is submitted and is related harmoniously to the terrain and to the use, scale and proportions of existing and proposed BUILDINGS in the immediate vicinity that have functional or visual relationship to the proposed use;
4. includes sufficient mitigating measures which shall be implemented as part of the special permit for any adverse effects noted in the Development Impact Statement, reports from town boards and agencies, reports from consultants and public hearings;
5. will result in no pollution or contamination of the ground water, a ground water recharge area, a well, pond, stream, watercourse or inland wetland;
6. will result in no significant effect on the "level of service" (LOS) of the town roads or intersections of these roads;
7. will result in no significant effect on level of service for any service provided by the Town, including fire, police and ambulance;
8. will result in no redirection of existing surface water runoff such that there would be material impact on abutting parcels or downstream properties unless an appropriate easement is obtained to an existing watercourse;
9. will result in no transport by air or water of erodible material beyond the boundary line of the LOT (See also Section 3.8. Use Regulations, General);
10. will provide adequate provision for pedestrian traffic; and
11. will comply with all requirements of Site Plan Approval and all other applicable requirements of the Zoning Bylaw.

### **3.2 Contents of Application for Certain Types of Special Permits**

In addition to the application requirements as described in section 2.4 of these Rules, the following Special Permit types require additional plans and/or supporting documents.

3.2.1 New construction on a vacant pre-existing non-conforming lot (Section 3.9.7 of the Zoning Bylaw).

Sufficient information to determine that the lot was lawfully in existence prior to the adoption of the Zoning Bylaw, or in compliance with the Zoning Bylaw at the time it was created, including copies of recorded plans and deeds. (Complete Non-Conforming Lot Justification Form – Appendix 6).

3.2.2 Uses designated in the Zoning Bylaw as requiring a Special Permit granted by the ZBA under the following sections of the Zoning Bylaw shall require a Development Impact Statement and supporting documents:

- Section 3.2.2 (Residential District)
- Section 3.3.3 (Business District)
- Section 3.9.6 (Changes of Use and Limitation on Intensity and Size of Use - Other Than Single- or Two-Family Residential Dwellings)
- Section 7.2 (Parking)

3.2.3 Floodplain District Mapping Error (Section 5.1.1.7 of the Zoning Bylaw)

- Sufficient information to demonstrate that it is clearly shown that the land intended for said use or structure is included within the Flood Plain District through mapping error, or that no portion of said proposed new use or structure will be below the flood plain elevation as defined in the Zoning Bylaw.

3.2.4 Additional Information

The ZBA may request information, including but not limited to a stormwater report, in addition to specific requirements stated in these rules if the ZBA finds that such information is necessary to properly act upon the application in question.

## **Section 4 VARIANCES**

### **4.1 APPLICABILITY**

The Zoning Bylaw sets forth regulations for use of land, buildings and structures. A deviation from any of those provisions may be sought through the variance process.

An application for variance is required for any proposed construction that creates a new non-conformity. Expansion of an existing non-conformity is subject to a Special Permit as an alteration to a pre-existing nonconforming structure and does not require a variance.

No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.

### **4.2 Contents of Application**

In addition to application requirements as described in section 2.4 the following plans and documentation are required for any Application for Variance, as set forth in the Stow Zoning Bylaw, shall include the following:

#### **4.2.1 A written description of the proposed variance request including:**

- Property line setback as required by the Zoning Bylaw;
- Existing property line setback;
- Proposed property line setback;
- Height of existing structure(s);
- Height of proposed structure(s); and
- Requested variance (difference between required and proposed setback and/or height).

#### **4.2.2 Sufficient information, in writing, describing how all of the following conditions can be met in order for the ZBA to grant a variance from the requirements of the Zoning Bylaw in accordance with M.G.L Chapter 40A, Section 10:**

Owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;

1. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the Applicant or Appellant;
2. The desired relief may be granted without substantial detriment to the public good; and
3. The desired relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

**Section 5**  
**Appeal of Decision of Building Commissioner/Zoning Enforcement Officer/Sign Officer**  
**(hereinafter the Building Commissioner)**

**5.1 APPLICABILITY**

Any person aggrieved by a decision or order of the Building Commissioner, whether or not previously a party to the proceeding, or any municipal office or board, may appeal to the ZBA within thirty days after the decision of the Building Commissioner/ Zoning Enforcement Officer has been filed in the office of the town clerk.

**5.1.1 SIGNS**

In accordance with Section 6.3.7.6 (Right of Appeal) of the Zoning Bylaw, any person who is dissatisfied with the decision of the Building Commissioner may appeal, in writing, to the ZBA within thirty (30) days from the date of such decision.

In granting a variance under Section 6.3 (Signs) of the Zoning Bylaw the ZBA shall find:

1. The Application describes a specific case which appears not to have been contemplated by the Zoning Bylaw, or
2. Enforcement would involve practical difficulties or unnecessary hardship; and
3. In either instance, the ZBA shall find that desirable relief may be granted without substantially derogating from the intent of the Zoning Bylaw.

**5.2 Contents of Application**

Any Application for Appeal of Decision of the Building Commissioner shall include the following:

**5.2.1 Application Form** – See Appendix 1 of these Rules

**5.2.2 Certified List of Abutters**

List of the Parties in Interest as defined in these Rules, certified by the Board of Assessors or its authorized representative, including associated mailing labels. The Applicant shall pay any charges required by the town Assessor for the list.

**5.2.3 Plans and Supporting Documents**

**5.2.3.1 Recorded Plans and Deeds**

A copy of the most recently recorded plan(s) and deed(s) for the LOT(s) on which the appeal is being sought, bearing the book number(s), page number(s), and date(s) of recording(s) or registration(s).

**5.2.3.2 Supporting Documents**

- The written notice from the Building Commissioner which identifies the violation, or reason for denial or decision.
- Any and all briefs or materials submitted to the Building Commissioner upon which the determination was made.

### **5.3 Additional Information**

The Application may contain whatever additional information the Applicant feels is necessary to properly inform the ZBA about the request including legal opinions, copies of deeds, historical data, studies, and reports.

## **Section 6 PUBLIC HEARING and DECISION**

### **6.1 Public Hearing Notice**

Upon receipt of an Application, the ZBA shall set the date and time for the public hearing which shall be held within sixty-five (65) days of the Application filing date. Notice of the hearing shall be published by the ZBA in a newspaper of general circulation once in each of two (2) successive weeks. The first such publication shall appear not less than fourteen (14) days before the day of the hearing. A copy of the notice shall be posted in a conspicuous place in the Town Building for a period of not less than fourteen (14) days before the date of the hearing. The ZBA shall forward copies of the notice by mail, postage prepaid, to all property owners on the list of abutters furnished by the Assessors' office.

The Applicant may appear on their own behalf or be represented by an agent or attorney. Failure to appear or be represented at a public hearing will jeopardize the success of an Application.

### **6.2 Public Hearing Presentation**

An applicant may appear on their own behalf or be represented by an agent or attorney. It is the responsibility of the Applicant or their agent to present the Application to the ZBA and to the public. In the absence of an appearance, the ZBA may decide the matter using the information it has received. Failure to appear at a public hearing could seriously jeopardize the success of an Application.

### **6.3 Public Hearing Continuance**

The ZBA may continue a public hearing if it finds that the continuance is necessary or appropriate to allow the Applicant or others to provide additional information. In such a case, the Chairman shall announce to those present, prior to the adjournment of the hearing, the specific date, time, and place where the hearing will be continued, and the subject matter to be discussed at the continued hearing. The period within which final action shall be taken may be extended for a defined period by written agreement between the ZBA and the Petitioner and a copy is filed with the Town Clerk. (Appendix 4)

### **6.4 Time Period for ZBA Deliberation**

The ZBA will act on applications:

- 6.4.1 within ninety (90) days after the close of the public hearing for Special Permits
- 6.4.2 within one hundred (100) days after submission of an application for variance or appeal from Decision of Building Commissioner/Zoning Enforcement Officer/Sign officer.

### **6.5 Withdrawal of Application**

Any Application for a variance or application for a special permit which has been transmitted to the ZBA may be withdrawn, without prejudice, prior to the publication of the notice of a public hearing by notice in writing (Appendix 5) to the ZBA. Withdrawal of any application thereafter requires ZBA approval. No refund of Application Fees will be provided if an Application is withdrawn after publication of the notice of public hearing.



## **6.6 Decision:**

The concurring vote of four (4) of the five (5) Members participation in the Public Hearing shall be necessary to decide in favor of granting the variance, special permit or appeal from unfavorable action of the Building Commissioner. A failure of the ZBA to achieve the required vote shall be deemed a denial of the Application.

Only those members of the ZBA who were in attendance at all sessions of the public hearing session may vote on the variance, special permit or appeal in question.

### **6.6.1 Notice of Decision**

The ZBA shall file a copy of its decision with the Town Clerk and shall forward a copy to the applicant, abutters and any other party requesting same.

## **6.7 Appeal of Decision**

Any person aggrieved by a decision of the ZBA may file an appeal of such decision in Superior or Land Court within twenty (20) days of the ZBA's filing of the Decision with the Town Clerk in accordance with M.G. L., Chapter 40A, Section 17.

## **6.8 Effective Date of Decision**

No decision of the ZBA shall become effective until the Town Clerk certifies that the twenty-day appeal period has expired, and no appeal has been filed, and a copy of the decision has been recorded, by the Applicant, in the Middlesex South Registry of Deeds or Land Court and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's Certificate of Title if registered land. A copy of the decision, properly certified as recorded by the Registrar of Deeds or Land Court, shall be returned to the Town Clerk, Building Commissioner and the ZBA. The Applicant is responsible for filing the decision in the Registry of Deeds, for paying the recording fees and for returning a copy of the recording to the Town. A copy of the certified decision shall be filed with any Application for building permit.

## **6.9 Limitation of the Decision**

The granting of a permit constitutes approval only under the pertinent sections of the Zoning Bylaw. The Applicant is responsible to obtain other permits or approvals required by other governmental boards, agencies or bodies having jurisdiction.

6.9.1 A variance granted by the ZBA must be exercised within one year of grant. It may be extended for a period of six months if Application is made prior to the expiration of the one-year period.

6.9.2 A special permit granted by the ZBA shall lapse within two (2) years unless substantial use or construction has commenced, or an extension has been granted for good cause.

## **6.10 Amending Decision**

A previous Decision may be amended by written request to the ZBA or on the ZBA's own motion. The ZBA shall determine whether any request for changes to the Decision constitutes a minor amendment or if such request should be considered a new Application requiring a public hearing. The ZBA may amend a Decision without a new public hearing provided it finds that the amendment is not significant to the public interest and is

consistent with the purpose and intent of the Zoning Bylaw. Minor modifications may include but not be limited to:

- Correction of a scrivener's error.
- Alteration to administrative requirements, including but not limited to the timing of submittals or the sequencing of work or construction tasks, except where such alteration could change the impact on abutting property owners.

#### **6.11 Repetitive Application**

No application which has been unfavorably and finally acted upon by the ZBA shall be acted favorably upon within two years after the date of final unfavorable action unless:

- 6.11.1 the ZBA finds by a vote of four (4) of the five (5) members, that specific and material changes in the conditions upon which the previous unfavorable action was based have occurred and describe such changes in the records of the ZBAs proceedings, and
- 6.11.2 all but one member of the Planning Board consents to the consideration of the matter; and
- 6.11.3 after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.